

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

RICHARD A. PERALES,)
)
)
Petitioner,)
v.) Civil Action
) No. 10-3025-CV-S-RED-H
MARTY C. ANDERSON, Warden,)
United States Medical Center for)
Federal Prisoners,)
)
Respondent.)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges his conditions of confinement. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner has failed to state a constitutional violation, it must be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner contends that he was denied an evidentiary hearing with a jury of his peers at the time of his civil commitment; that he had ineffective assistance of counsel at the commitment hearing; and that he was not furnished with a trial transcript for purposes of appeal.

After a Show Cause Order was entered, the United States filed its response. Counsel for petitioner thereafter filed a Motion to Withdraw. Petitioner was provided an opportunity to file a *pro se* traverse, which he did not do.

A review of the record indicates that petitioner was properly committed pursuant to the provisions of 18 U.S.C. § 4246 in this district in 1999. United States v. Perales, 99-3283-CV-S-RED (W.D. Mo. Sep. 29, 1999). The record indicates that petitioner received all the due process rights to which he was statutorily entitled at the commitment hearing. Petitioner was present personally and with counsel; a report was received and considered from the independent psychological examiner; and a psychiatric social worker testified regarding arrangements that had been made with the state of Texas for petitioner's two-stage conditional release. Additionally, petitioner testified on his own behalf. After considering the unanimous expert opinion that defendant was suffering from a mental disease or defect such that his release would constitute a danger to the community and others, he was committed pursuant to § 4246. [Respondent's Exhibit 4]. Because petitioner has failed to state a constitutional violation regarding his commitment proceeding, it must be recommended that the petition for writ of habeas corpus be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri, RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate

¹ Petitioner has 14 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.

Judge

Date: 5/17/10